

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**VICTOR MATHIS, 646316,**  
**Petitioner,**

**v.**

**WILLIAM STEPHENS, Director, Texas**  
**Dept. Of Criminal Justice, Correctional**  
**Institutions Division,**  
**Respondent.**

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**No. 3:13-CV-0180-P**

**FINDINGS, CONCLUSIONS AND RECOMMENDATION**  
**OF THE UNITED STATES MAGISTRATE JUDGE**

This case has been referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636(b) and a standing order of reference from the district court. The Findings, Conclusions and Recommendation of the Magistrate Judge are as follows:

**I. Background**

Petitioner filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. He challenges a July 28, 2010 parole revocation hearing and the subsequent revocation of his parole. (Reply at 1.)

Petitioner states his parole was revoked after he violated his curfew. He argues that Respondent unlawfully admitted evidence of other warrants and arrests during the revocation hearing and that his parole should not have been revoked for an administrative violation. (*Id.* at 3-4.)

On July 24, 2013, Respondent filed his answer arguing, *inter alia*, that the petition is

barred by the statute of limitations. On August 16, 2013, Petitioner filed a reply. The Court finds the petition should be dismissed as time-barred.

## **II. Discussion**

### **1. Statute of Limitations**

The AEDPA establishes a one-year statute of limitations for federal habeas proceedings. *See* Antiterrorism and Effective Death Penalty Act, Pub.L. 104-132, 110 Stat. 1214 (1996). The one-year period is calculated from the latest of: (A) the date on which the judgment of conviction became final; (B) the date on which an impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such action; (C) the date on which the Supreme Court initially recognizes a new constitutional right and makes the right retroactively applicable to cases on collateral review; or (D) the date on which the facts supporting the claim became known or could have become known through the exercise of due diligence. *See* 28 U.S.C. § 2244(d)(1)(A)-(D).

Petitioner has alleged no state-created impediment under subparagraph (B) that prevented him from filing his federal petition. Nor does he base his petition on any new constitutional right under subparagraph (C). With regard to subparagraph (A), the Court determines that it is inapplicable because it pertains to direct review of “the judgment,” which is not at issue in this case. The Court will therefore calculate the one-year statute of limitations under subparagraph (D), from the date the facts supporting the claims raised in the instant petition became known or could have become known through the exercise of due diligence.

The Court determines that on the date of his revocation, August 11, 2010, Petitioner either knew of his claims, or could have known of his claims through the exercise of due

diligence. *See Biggins v. Dretke*, No. 3:03-CV-2005-P, 2004 WL 1898255 at \*2 (N.D. Tex. Aug. 24, 2004) (finding that on date of parole revocation petitioner knew, or could have known through the exercise of due diligence, of the loss of street-time credits); *Tweedy v. Dretke*, No. 4:03-CV-0520-A, 2003 WL 22724659 at \*3 (N.D. Tex. Sept. 15, 2003) (same). Petitioner then had one year, or until August 11, 2011, to file his federal petition.

Under 28 U.S.C. § 2244(d)(2), the limitations period is tolled during the pendency of state habeas proceedings or other collateral review. On September 29, 2010, Petitioner filed a state habeas petition challenging his revocation.<sup>1</sup> *Ex parte Mathis*, No. 31,492-06. This petition tolled the limitations period until it was denied on September 28, 2011, for a total of 365 days of tolling. When 365 days were added to the August 11, 2011, deadline, Petitioner's limitations date became August 11, 2012. Petitioner did not file his federal petition until January 10, 2013. His petition is therefore untimely.

## **2. Equitable Tolling**

The one-year limitation period is subject to equitable tolling in "rare and exceptional cases." *Davis v. Johnson*, 158 F.3d 806, 811 (5th Cir. 1998); *see also Fisher v. Johnson*, 174 F.3d 710, 713 (5th Cir.1999) (asserting that courts must "examine each case on its facts to determine whether it presents sufficiently 'rare and exceptional circumstances' to justify equitable tolling" (quoting *Davis*, 158 F.3d at 811)). The Fifth Circuit has held that "[e]quitable tolling applies principally where the plaintiff is actively misled by the defendant about the cause of action or is prevented in some extraordinary way from asserting his rights." *Coleman v.*

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<sup>1</sup>Petitioner also filed a petition for special review of the revocation proceeding. A petition for special review does not toll the AEDPA limitations period. *Wion v. Quarterman*, 567 F.3d 146, 148 (5<sup>th</sup> Cir. 2009).

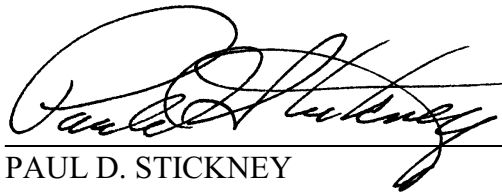
*Johnson*, 184 F.3d 398, 402 (5th Cir.1999) (quoting *Rashidi v. American President Lines*, 96 F.3d 124, 128 (5th Cir.1996)). Petitioner bears the burden of proof to show he is entitled to equitable tolling. *Phillips v. Donnelly*, 216 F.3d 508, 511 (5<sup>th</sup> Cir. 2000).

Petitioner argues he is entitled to equitable tolling because his MHMR (mental health/mental retardation) prevented his timely filing. Petitioner, however, has not explained how his MHMR prevented his timely filing. The record shows his pleadings are coherent and that he filed a motion for special review, a state habeas petition and this federal petition. Additionally, ignorance of the law and/or lack of knowledge regarding filing deadlines does not entitle a petitioner to equitable tolling. *Felder v. Johnson*, 204 F.3d 168, 171-72 (5<sup>th</sup> Cir. 2000). Petitioner has not shown that he was prevented in some extraordinary way from asserting his rights. He has failed to show rare and exceptional circumstances justifying equitable tolling in this case.

**RECOMMENDATION:**

The Court recommends that the petition for a writ of habeas corpus be dismissed with prejudice as barred by the one-year limitations period. *See* 28 U.S.C. §2244(d).

Signed this 18<sup>th</sup> day of December, 2013.

A handwritten signature in black ink, appearing to read "Paul D. Stickney", is written over a horizontal line.

PAUL D. STICKNEY  
UNITED STATES MAGISTRATE JUDGE

**INSTRUCTIONS FOR SERVICE AND  
NOTICE OF RIGHT TO OBJECT**

A copy of this report and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).